

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #1	CCRB Case #: 202005950	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/31/2020 5:35 PM	Location of Incident: § 87(2)(b)	Precinct: 103	18 Mo. SOL 2/28/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 09/01/2020 1:55 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 09/01/2020 1:55 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Garrett Poliey	10508	965421	103 PCT
3. POM Reinaldo Alvarez	15342	927853	103 PCT
4. SGT Dominick Perfetto	05230	940572	103 PCT
5. POM Kevin Gwinn	14299	956711	103 PCT
6. POM William Schoenewerk	31911	968789	103 PCT
7. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Marlene Taveras	07665	964799	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Garrett Poliey	Abuse: Police Officer Garrett Poliey entered § 87(2)(b) in Queens.	§ 87(2)(b)
B.POM Reinaldo Alvarez	Abuse: Police Officer Reinaldo Alvarez entered § 87(2)(b) in Queens.	§ 87(2)(b)
C.POM Kevin Gwinn	Abuse: Police Officer Kevin Gwinn entered § 87(2)(b) in Queens.	§ 87(2)(b)
D.POM William Schoenewerk	Abuse: Police Officer William Schoenewerk entered § 87(2)(b) in Queens.	§ 87(2)(b)
E.POM Reinaldo Alvarez	Abuse: Police Officer Reinaldo Alvarez entered § 87(2)(b) s room at § 87(2)(b) in Queens.	§ 87(2)(b)
F.POM Kevin Gwinn	Abuse: Police Officer Kevin Gwinn entered § 87(2)(b) s room at § 87(2)(b) in Queens.	§ 87(2)(b)
G.POM Garrett Poliey	Abuse: Police Officer Garrett Poliey entered § 87(2)(b) s room at § 87(2)(b) in Queens.	§ 87(2)(b)
H.POM William Schoenewerk	Abuse: Police Officer William Schoenewerk entered § 87(2)(b) s room at § 87(2)(b) in Queens.	§ 87(2)(b)
I. Officers	Force: Officers pointed their guns at § 87(2)(b)	§ 87(2)(b)
J. An officer	Off. Language: An officer made offensive remarks to § 87(2)(b) based upon economic loss.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
K. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
L.POM Kevin Gwinn	Force: Police Officer Kevin Gwinn used physical force against § 87(2)(b)	
M.POM William Schoenewerk	Force: Police Officer William Schoenewerk used physical force against § 87(2)(b)	
N.POM Kevin Gwinn	Force: Police Officer Kevin Gwinn used physical force against § 87(2)(b)	
O.POM William Schoenewerk	Force: Police Officer William Schoenewerk used physical force against § 87(2)(b)	
P.SGT Dominick Perfetto	Abuse: Sergeant Dominick Perfetto forcibly removed § 87(2)(b) to the hospital.	

## Case Summary

On September 1, 2020, § 87(2)(b) filed this complaint via the CCRB's call processing system.

On August 31, 2020, at approximately 5:35 P.M., § 87(2)(b) of § 87(2)(b) called 911 and stated that § 87(2)(b) was squatting at 93-12 202<sup>nd</sup> Street in Queens and refusing to leave. PO Reinaldo Alvarez, PO Garrett Poliey, PO Kevin Gwinn, and PO William Schoenewerk, all of the 103<sup>rd</sup> Precinct, responded, entered the house (**Allegations A, B, C, and D, Abuse of Authority: § 87(2)(g)**), and entered § 87(2)(b)'s room (**Allegations E, F, G, and H, Abuse of Authority: § 87(2)(g)**). Officers pointed their guns at § 87(2)(b)'s face (**Allegation I, Force: § 87(2)(g)**). An officer told § 87(2)(b) that he did not pay taxes (**Allegation J, Offensive Language: § 87(2)(g)** and **Allegation K, Discourtesy: § 87(2)(g)**). While bringing § 87(2)(b) down the stairs, PO Gwinn and PO Schoenewerk pushed him (**Allegations L and M, Force: § 87(2)(g)**) and squeezed the skin on his torso (**Allegations N and O, Force: Unfounded**). Sgt. Dominick Perfetto, of the 103<sup>rd</sup> Precinct, then arrived and forcibly removed § 87(2)(b) to the hospital (**Allegation P, Abuse of Authority: § 87(2)(g)**).

§ 87(2)(b) was not arrested or issued any summonses.

The investigation obtained a cell phone video from § 87(2)(b) (**01 Board Review**), as well as body-worn camera (BWC) footage from PO Marlene Taveras of the 103<sup>rd</sup> Precinct, PO Alvarez, PO Poliey, PO Schoenewerk, PO Gwinn, and Sgt. Perfetto (**02-09 Board Review**).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Garrett Poliey entered § 87(2)(b) in Queens.**

**Allegation (B) Abuse of Authority: Police Officer Reinaldo Alvarez entered § 87(2)(b) in Queens.**

**Allegation (C) Abuse of Authority: Police Officer Kevin Gwinn entered § 87(2)(b) in Queens.**

**Allegation (D) Abuse of Authority: Police Officer William Schoenewerk entered § 87(2)(b) in Queens.**

**Allegation (E) Abuse of Authority: Police Officer Reinaldo Alvarez entered § 87(2)(b)'s room at § 87(2)(b) in Queens.**

**Allegation (F) Abuse of Authority: Police Officer Kevin Gwinn entered § 87(2)(b)'s room at § 87(2)(b) in Queens.**

**Allegation (G) Abuse of Authority: Police Officer Garrett Poliey entered § 87(2)(b)'s room at § 87(2)(b) in Queens.**

**Allegation (H) Abuse of Authority: Police Officer William Schoenewerk entered § 87(2)(b)'s room at § 87(2)(b) in Queens.**

It is undisputed that on August 31, 2020, at 5 P.M., § 87(2)(b) a representative of § 87(2)(b) called 911 to ask for assistance with squatters at § 87(2)(b). § 87(2)(b) stated that the property was foreclosed and that his company was managing it on behalf of Fannie Mae. PO Alvarez and PO Poliey responded to this call and left after approximately 20 minutes. At 5:31 P.M. on the same day, § 87(2)(b) called 911 again to report that another squatter, § 87(2)(b) came downstairs after the officers left and went back upstairs, refusing to leave. PO Alvarez, PO Poliey, PO Gwinn, and PO Schoenewerk responded to this second call. All four officers entered the house. After identifying § 87(2)(b)'s room, the officers knocked on the locked door for approximately

20 minutes. PO Gwinn and PO Alvarez then kicked the door open, after which all four officers entered the room. At approximately the same time, Sgt. Perfetto and PO Taveras arrived on scene.

§ 87(2)(b) testified that he had moved into the house in March 2020, subletting a second-floor bedroom from someone named § 87(2)(b) **(10-11 Board Review)**. At the time of his interview, the sublease agreement, which had no end date, and other paperwork documenting rent payments were still in the bedroom at § 87(2)(b) § 87(2)(b) so § 87(2)(b) did not have access to them. On August 31, 2020, approximately five people were living in the house, which could fit 10 to 12 residents. On that date, at approximately 4:30 P.M., a resident named § 87(2)(b) knocked on § 87(2)(b)'s door and stated that a white male had broken down the front door and told him to leave because the police were coming. § 87(2)(b) told § 87(2)(b) that this did not concern him. § 87(2)(b) left when he heard the police were coming. None of the other residents were at home. When § 87(2)(b) went downstairs, he saw § 87(2)(b) standing outside the front door, which was broken. § 87(2)(b) identified himself as a representative of § 87(2)(b) and told § 87(2)(b) that the police were on their way and he should leave. Believing that neither § 87(2)(b) nor § 87(2)(b) was associated with the owner, Fannie Mae, § 87(2)(b) went back to his room, locked the door, and went to sleep. When § 87(2)(b) heard knocking on his bedroom door, he believed it was officers but did not open the door since he had not committed any crime. After kicking open the door, five officers entered § 87(2)(b)'s room simultaneously. § 87(2)(b) offered to show the officers his lease and other apartment-related paperwork, but they refused to look at it.

§ 87(2)(b) stated that he periodically visited the property to inspect it and make sure there were no squatters or other issues **(12 Board Review)**. On August 31, 2020, a woman who lived next door to the house called § 87(2)(b) and told him that there were squatters living there. She stated that she had called 911 the night prior because one of the squatters had passed out in her driveway. When § 87(2)(b) arrived at the property, he called 911. When officers arrived, he gave them permission to enter the property and its rooms. He did not recall if he showed them paperwork for the property. The officers escorted one squatter upstairs to get his belongings. Before leaving, this individual gave the key to § 87(2)(b) since the squatters had rekeyed the house. § 87(2)(b) then believed the house was empty and the officers left. Three minutes later, § 87(2)(b) came down the stairs. When officers responded to his second 911 call, § 87(2)(b) told them § 87(2)(b) was inside and did not belong there.

At 01:00 in PO Alvarez's first BWC, PO Alvarez and PO Poliey are responding to the first 911 call **(04 Board Review)**. § 87(2)(b) and Individual 1, who identifies herself as the next-door neighbor, are standing in front of the house. § 87(2)(b) tells PO Alvarez and PO Poliey that the bank owns the property, and the house should be vacant, but squatters keep rekeying it, so he is waiting for a locksmith to come. Individual 2 then walks out of the neighboring driveway and joins them. § 87(2)(b) tells the officers about two squatters who were present earlier in the day, one of whom acknowledged that he did not live there, took his belongings, and left willingly. The other squatter claimed that his "homeboy" owned the property and left in a vehicle with two other people. Individual 1 and Individual 2 confirm this information. At 04:20, PO Alvarez receives a phone call from another officer who states that they have stopped the vehicle with the squatter. At 07:30, PO Alvarez continues to speak into his cell phone and states, "He has a key? How does he have a key?" § 87(2)(b) states, "Because he rekeyed it." At 08:09, PO Alvarez hangs up the phone and states, "Now he's saying he lives here." § 87(2)(b) states, "I could show you the deed." PO Alvarez states, "I'm not worried about the deed. You might have a squatter. You know what you have to do, right?" PO Poliey states, "You have to evict them." PO Alvarez states, "Unfortunately, they've got squatter's rights. Now if we tell him he's gotta go, if he leaves, that's fine. But if he says that he lives here and has a key, you've got to go get him evicted." At 08:45, § 87(2)(b) states, "Correct me if I'm wrong,

but he has to be here for 30 days to have those squatter's rights, correct?" PO Poliey states, "Yeah, but if he says that he's been living here for more than 30 days—" § 87(2)(b) states, "But if I have pictures that show that we had this property rekeyed on August 16<sup>th</sup>?" Individual 1 states, "They haven't been here for that long. They've only been here for like two weeks." At 09:10, § 87(2)(b) states, "I'm going to show it to you for your own—" and walks toward PO Alvarez with his cell phone extended toward him. PO Alvarez deactivates his BWC before the cell phone screen is visible.

At 01:13 in PO Alvarez's second BWC, PO Alvarez and PO Poliey are responding to the second 911 call and meet § 87(2)(b) outside **(03 Board Review)**. § 87(2)(b) states that § 87(2)(b) is inside and that it looked like he had something under his shorts near his waist. Individual 1 is still standing outside and confirms that § 87(2)(b) came down immediately after the officers left. At 01:46, PO Poliey walks up the staircase to the house, opens the front door, and enters. He is followed by PO Alvarez. At 03:10, PO Schoenewerk and PO Gwinn are visible inside the house. At 03:35, PO Poliey identifies two locked rooms and states that it sounds like someone is inside. PO Alvarez states, "Police department. Come out. We know you're squatting. He just wants you to leave." At 19:20, after officers have knocked and asked § 87(2)(b) to leave for approximately 15 minutes, PO Gwinn and PO Alvarez kick open the door to § 87(2)(b)'s room and enter. § 87(2)(b) states, "All my stuff is in here, man [...] I'm not moving. Leave me alone, man. My own house. This is my house. Look at all my stuff." At 24:15 in PO Alvarez's BWC, PO Alvarez is standing at the police vehicle with § 87(2)(b) and asks how long he had been living in the house. § 87(2)(b) states, "Three months." PO Alvarez states, "Okay, three months. Who you been paying rent to?" § 87(2)(b) states, "I paid it one time. Shit. Man, I stay here -- that's where I stay at. My cable, everything is inside, man."

At 25:23 in PO Poliey's BWC, while § 87(2)(b) is inside the police vehicle, he states, "I have paperwork for that house, everything. Y'all didn't ask to see no paperwork. [...] I lived there in the house three months. I pay my fucking rent. I pay my fucking water **(05 Board Review)**."

At 04:27 in Sgt. Peretto's BWC, while § 87(2)(b) is sitting inside the police vehicle, Individual 1 tells Sgt. Peretto, "It's been like this for two weeks," **(09 Board Review)**. At 08:12, Sgt. Peretto tells the neighbor, "Look, it's a proper eviction if he's actually living here, not just staying here for a couple of days. It's a difference. It's past 30 days, then – this is not livable conditions. He's not living here. He's just staying here. It's difference." Individual 1 states, "Yeah, for about two weeks." Sgt. Peretto states, "Two weeks. You have to live here more than 30 days for you to be technically a legal resident. Then you have to go through the whole legal system."

PO Alvarez testified that he did not recall if § 87(2)(b) showed him any documentation to prove that he worked for Fannie Mae **(13 Board Review)**. PO Alvarez knew § 87(2)(b) had access to and rights to the house because he had the keys and had called 911. After watching his BWC from the first 911 call from 08:46 to the end of the video, PO Alvarez stated that he did not recall what § 87(2)(b) was showing him on the cell phone. § 87(2)(b) told the officers that he had gone to work on the house when he observed people inside and told them they were not supposed to be there. Those people had left the location in a vehicle. Neighbors standing outside the house told PO Alvarez that they had called 911 during the prior two weeks because people were breaking into the house. The individuals who left in the vehicle returned and officers told them that the bank owned the house, and they were not supposed to be there. The individuals stated that someone had let them in because they needed a place to stay and acknowledged they were not supposed to be there. They then retrieved their belongings and left the location. PO Alvarez did not recall if he or any officer entered the house at that time. When PO Alvarez responded to the second 911 call, § 87(2)(b) and the neighbors reiterated the information about the house and told him about § 87(2)(b). § 87(2)(b) implicitly gave permission for PO Alvarez to enter the building because he stated that he wanted the officers to

remove the individual. After standing outside the room and asking § 87(2)(b) to leave many times, officers kicked open the door and entered the room. § 87(2)(b) then told officers that he lived there. § 87(2)(b) asked him to explain this, but § 87(2)(b) would not answer his or any other officers' questions. § 87(2)(b) did not state how long he had lived there, and PO Alvarez did not recall if § 87(2)(b) offered to show paperwork. However, PO Alvarez believed he was trying to ask § 87(2)(b) for paperwork, but § 87(2)(b) would not acknowledge him.

PO Gwinn stated that when he and PO Schoenewerk arrived, § 87(2)(b) met them outside and stated that he wanted them to remove § 87(2)(b) who was a trespasser **(14-15 Board Review)**. PO Gwinn did not recall § 87(2)(b) showing any documentation that proved he was the owner. However, PO Gwinn knew that § 87(2)(b) was the owner because he stated that he had called 911. Additionally, when the officers asked if they could access the house, § 87(2)(b) gave them permission, had keys, and let the officers into the building. PO Gwinn did not recall which officer obtained this permission. He was not aware of any other trespassers. While standing outside § 87(2)(b)'s room, he could hear § 87(2)(b) inside talking to someone. He did not recall if he knew how long § 87(2)(b) had been at the property. When the officers entered § 87(2)(b)'s room, he stated that he lived there but had no documentation, bills, or keys. PO Gwinn did not recall any officer asking § 87(2)(b) for paperwork and did not recall why they did not do so. He did not recall if § 87(2)(b) ever said anything about having paperwork that would prove he lived in the house.

Sgt. Perfetto testified that he responded to the location at approximately 5:50 P.M., after PO Alvarez called him **(16 Board Review)**. Over the phone, PO Alvarez stated that § 87(2)(b) said he had been to the house two weeks prior when someone else was squatting. That person had left on their own and § 87(2)(b) had changed the locks afterward. When Sgt. Perfetto arrived, the officers were already inside § 87(2)(b)'s room. Sgt. Perfetto did not hear any officer ask § 87(2)(b) for documentation, ID, or mail, nor did he hear any officer ask § 87(2)(b) how long he had lived there. Sgt. Perfetto did not have any conversations with § 87(2)(b). § 87(2)(b) told Sgt. Perfetto that he had changed the locks two weeks prior. § 87(2)(b) did not show Sgt. Perfetto any documentation proving that he represented Fannie Mae. Absent documentation, Sgt. Perfetto knew that § 87(2)(b) had rights to the building based on what PO Alvarez had told him. There were two neighbors present who stated that § 87(2)(b) did not live there and that they had seen him crawl through the back window. He did not recall if they told him how long ago this had occurred.

A Lexis/Nexis database foreclosure search shows that the house was foreclosed upon on § 87(2)(b), with Wells Fargo as the buyer **(17 Board Review)**.

*New York City Administrative Code §26-521* states, "It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer," **(18 Board Review)**. Likewise, NYPD Patrol Guide Procedure 214-12 states that it is illegal to evict an individual from a property without a Warrant of Eviction or a Government Order to Vacate if the individual has a lease or if they have occupied the dwelling for 30 days or more **(19 Board Review)**.

According to *People v. Battee*, 94 A.D.2d 935, officers may enter a property with the consent of the homeowner **(25 Board Review)**. The case specifically relates to a mother who owned and paid all the bills for a house where her son lived. The court ruled that her consent, even in absence of her son's, provided sufficient permission for officers to enter the residence.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (I) Force: Officers pointed their guns at § 87(2)(b)**

**Allegation (J) Offensive Language: An officer made offensive remarks to § 87(2)(b) based upon economic loss.**

**Allegation (K) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that when the officers entered his room, they all pointed their guns at his face and kept their guns drawn for five to 15 minutes **(10-11 Board Review)**. § 87(2)(b) had previously been arrested by one of these officers who he described as a 5'3" or 5'4" tall Hispanic male with a stocky or chubby build and black hair named PO Velasquez. When § 87(2)(b) asked the officers what the problem was, PO Velasquez told him that he did not live there and did not pay taxes.

At 18:43 in PO Poliey's BWC, PO Alvarez and PO Gwinn enter § 87(2)(b)'s bedroom **(05 Board Review)**. Their arms are down to their sides as they walk in. Both PO Poliey and PO Schoenewerk are standing outside the bedroom. At 18:49, PO Poliey enters the bedroom. PO Gwinn and PO Alvarez are using both their hands to hold § 87(2)(b)'s arms. At 16:10 in PO Schoenewerk's BWC, PO Schoenewerk's hands are visible holding the bedroom door **(07 Board Review)**. At 16:00 in PO Gwinn's BWC, PO Poliey is standing inside the room with his arms down to his side **(08 Board Review)**. At 16:05, he holds § 87(2)(b)'s right arm with his right hand. There is never a gun visible in any officer's hand and no officer makes any statement regarding § 87(2)(b) paying taxes.

PO Alvarez and PO Gwinn both testified that they did not recall pointing their gun at § 87(2)(b) nor did they recall any other officer doing so **(13-15 Board Review)**. Sgt. Perfetto testified that he did not see any officers with their guns drawn **(16 Board Review)**. PO Alvarez, PO Gwinn, and Sgt. Perfetto all testified that they did not tell § 87(2)(b) he did not pay his taxes and they did not hear any other officer do so.

An NYPD Booking Arraignment and Disposition System database search shows that none of the officers on scene had previously arrested § 87(2)(b) **(20 Board Review)**.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (L) Force: Police Officer Kevin Gwinn used physical force against § 87(2)(b)**

**Allegation (M) Force: Police Officer William Schoenewerk used physical force against § 87(2)(b)**

**Allegation (N) Force: Police Officer Kevin Gwinn used physical force against § 87(2)(b)**

**Allegation (O) Force: Police Officer William Schoenewerk used physical force against § 87(2)(b)**

It is undisputed that, after removing § 87(2)(b) from the room, officers brought him downstairs and put him into a police vehicle parked outside the house.

§ 87(2)(b) testified that while officers were walking him down the stairs, two officers held his hands, while two other officers squeezed the skin on his ribs “as though it was a handle,” **(10-11 Board Review)**. § 87(2)(b) believed that officers squeezed him this way to provoke him into fighting back so that they could use more force or shoot him. To prevent them from being able to use this reasoning, § 87(2)(b) made his body go limp. When he did so, officers pushed his back and stated, “Don’t fall down the stairs,” and “Oh, you want to fall?” § 87(2)(b) believed that the officers were trying to throw him down the stairs and make it appear as if he had fallen.

§ 87(2)(b) stated that he saw the officers bringing § 87(2)(b) down the stairs and did not see them push him or use any other force **(12 Board Review)**. He did not see any officer hold § 87(2)(b) by his waist or torso, only by his arms.

At 16:56 in PO Schoenewerk’s BWC, PO Gwinn is on the staircase, standing behind § 87(2)(b) with his right arm looped through § 87(2)(b)’s left arm **(07 Board Review)**. PO Schoenewerk’s right hand is holding § 87(2)(b)’s right forearm. No other officers are near § 87(2)(b). PO Gwinn states, “Walk [in form].” § 87(2)(b) then appears to fall down a step or two and states, “I’m going to fall.” As this occurs, both officers are still holding him in the same places. PO Gwinn then walks forward so that he is standing to § 87(2)(b)’s left and loops his right arm under § 87(2)(b)’s armpit. PO Schoenewerk continues to hold onto § 87(2)(b)’s right arm while walking behind them. Neither officer touches § 87(2)(b)’s back or squeezes his side.

At 19:23 in PO Gwinn’s BWC, PO Gwinn is beside the police vehicle with § 87(2)(b) who is handcuffed **(08 Board Review)**. PO Schoenewerk is holding § 87(2)(b)’s left shoulder with both hands and PO Gwinn’s right arm is looped under § 87(2)(b)’s right arm. § 87(2)(b) quickly twists his body to the left while yelling. PO Gwinn’s left hand then moves along § 87(2)(b)’s tank top on the left side of his torso and grabs only fabric, which he then holds, bunched up, in his hand. § 87(2)(b)’s waistline becomes visible and his shirt is visibly pulled up. At 19:29, § 87(2)(b) states, “This guy is squeezing my side [...] you’re squeezing my side, officer.” PO Gwinn’s fingers have not unclenched since initially grabbing the fabric and are still in the same position.



PO Gwinn testified that while he and PO Schoenewerk were trying to bring § 87(2)(b) down the stairs, § 87(2)(b) refused to walk by making his body “like a dead weight” and not moving his feet **(14-15 Board Review)**. Therefore, to ensure the safety of § 87(2)(b) and the officers, PO Gwinn and PO Schoenewerk lifted § 87(2)(b) up by his underarm bicep area and carried him down the stairs. PO Gwinn did not push § 87(2)(b) on the stairs. Then, while PO Gwinn was trying to put § 87(2)(b) in the backseat of the police vehicle, § 87(2)(b) was resisting by pushing his body weight against PO Gwinn. For this reason, PO Gwinn put one hand on § 87(2)(b) s arm and the other hand on his torso while pushing him toward the vehicle. PO Gwinn did not independently recall squeezing anywhere on § 87(2)(b) s person. After watching PO Taveras’s BWC from 03:58 to 04:21, PO Gwinn stated that he did not recall if he had grabbed only § 87(2)(b) s shirt or also his skin. He stated that he grabbed that area to secure § 87(2)(b) who was moving and pushing his body against his. Since there was not much to hold onto, PO Gwinn grabbed the shirt while holding § 87(2)(b) s arm with his other hand in order to keep hold of § 87(2)(b) while attempting to get him into the car.

Sgt. Perfetto testified that he walked down the stairs right behind PO Gwinn, PO Schoenewerk, and § 87(2)(b) **(16 Board Review)**. He did not see any officer push § 87(2)(b) on the stairs or use any other force. PO Alvarez stated that he was not aware of any officer pushing § 87(2)(b) while walking down the stairs or squeezing § 87(2)(b) s skin **(13 Board Review)**.

BWC footage shows that only PO Gwinn and PO Schoenewerk were near § 87(2)(b) while he was walking down the stairs. Footage shows both officers’ hands at all times while they walk down the stairs and shows neither officer pushing § 87(2)(b) or squeezing his torso. § 87(2)(g)

**Allegation (P) Abuse of Authority: Sergeant Dominick Perfetto forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that after officers removed him from the house, § 87(2)(b) was forcibly removed to § 87(2)(b) by ambulance.

§ 87(2)(b) testified that he remained at the hospital for two to three hours **(10-11 Board Review)**. During this time, a doctor told § 87(2)(b) that he was drunk although he was not. No doctor gave § 87(2)(b) a diagnosis. § 87(2)(b) did not provide the investigation with signed HIPAA forms or medical records.

At 03:32 in Sgt. Perfetto’s BWC, § 87(2)(b) is standing outside the police vehicle **(09 Board Review)**. § 87(2)(b) is yelling loudly non-stop for approximately three minutes, since the officers removed him from his room. Sgt. Perfetto then tells PO Alvarez, “Call a bus.” PO Taveras states, “EDP?” Sgt. Perfetto states, “Yeah.”

At 36:55 in PO Alvarez’s BWC, § 87(2)(b) states, “What am I still doing in this car, man?” **(03 Board Review)**. PO Alvarez states, “We’re waiting for an ambulance.” § 87(2)(b) states, “For what?” PO Alvarez states, “You’re going to the hospital.” § 87(2)(b) states, “For what? I don’t want to go to the hospital.” At 38:49, § 87(2)(b) yells, “Fuck it. Kill me.”

Sgt. Perfetto testified that it was his decision to remove § 87(2)(b) to the hospital **(16 Board Review)**. He decided this because PO Alvarez told him that § 87(2)(b) stated he wanted officers

to shoot and kill him. Due to this statement, Sgt. Perfetto wanted to have him checked out by a doctor. He therefore directed PO Alvarez to call an ambulance. Additionally, § 87(2)(b) was combative, irate, and screaming, leading Sgt. Perfetto to believe he might pose a danger to himself or others. He did not hear § 87(2)(b) make any threats.

PO Alvarez testified that Sgt. Perfetto asked him to call an ambulance because § 87(2)(b) was so irate **(13 Board Review)**. § 87(2)(b) repeatedly stated, “Just kill me now.” This made PO Alvarez believe that § 87(2)(b) was a danger to himself since it is not a rational thing to say. PO Alvarez believed that this factored into why it was decided that § 87(2)(b) was removed to the hospital.

PO Gwinn stated that he did not recall who made the decision to remove § 87(2)(b) to the hospital or who called the ambulance **(14-15 Board Review)**. Once § 87(2)(b) was inside the police vehicle, § 87(2)(b) began to yell that he wanted officers to shoot and kill him. To PO Gwinn, this comment made § 87(2)(b) seem suicidal, “emotionally disturbed,” and like he needed psychological treatment.

According to NYPD Patrol Guide Procedure 221-13, “the primary duty of all members of service is to preserve human life” and “the safety of all persons involved is paramount in cases involving emotionally disturbed persons,” **(21 Board Review)**. The procedure defines an “emotionally disturbed person” as someone who “appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.” When an officer believes that such a person must be taken into custody because they are “conducting [themselves] in a manner likely to result in serious injury to [themselves] or others,” they must ensure the safety of that individual, as well as any officers or civilians present. Officers are then to have the individual removed to hospital in an ambulance.

§ 87(2)(g)

[REDACTED]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to four additional CCRB complaints and has been named as victim in eight additional allegations **(22 Board Review)**.

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

§ 87(2)(b)

- Sgt. Perfetto has been a member of service for 16 years and has been a subject in six additional cases and 12 additional allegations, none of which were substantiated.

§ 87(2)(g)

- PO Alvarez has been a member of service for 20 years and has been a subject in 10 additional cases and 18 additional allegations, of which four were substantiated:
  - 201100059 involved substantiated allegations of discourteous language and a vehicle search against PO Alvarez. The Board recommended command discipline and the NYPD imposed instructions.
  - 200302054 involved substantiated allegations of threat of arrest and retaliatory summons against PO Alvarez. The Board recommended Command Discipline and the NYPD imposed Command Discipline A.

§ 87(2)(g)

- PO Gwinn has been a member of service for seven years and has been a subject in five additional cases and 14 additional allegations, of which one was substantiated.
  - 201905967 involved a substantiated allegation of refusal to process a civilian complaint against PO Gwinn. The Board recommended formalized training and the NYPD imposed instructions.

§ 87(2)(g)

- PO Poliey has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Schoenewerk has been a member of service for two years and has been a subject in one additional case

§ 87(2)(g)

### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On January 28, 2022, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt (**23 Board Review**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 1

Investigator: Rachel Adler  
Signature

Investigator Rachel Adler  
Print Title & Name

2/1/2022  
Date

Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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